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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,306	11/14/2003	Dakshi Agrawal	728-240	1229
66668 7590 09/29/2010 THE FARRELL LAW FIRM, P.C. - IBM 290 Broadhollow Road Suite 210E Melville, NY 11747				
EXAMINER GOODCHILD, WILLIAM J				
ART UNIT 2445		PAPER NUMBER		
MAIL DATE 09/29/2010		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/713,306

**Applicant(s)**

AGRAWAL ET AL.

**Examiner**

WILLIAM J. GOODCHILD

**Art Unit**

2445

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 July 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 is/are allowed.
- 6) ☒ Claim(s) 1-10, 12 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/22)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114 was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 07/26/2010 has been entered.

### ***Allowable Subject Matter***

2. Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-10 and 12-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Fraenkel et al., (hereinafter Fraenkel), (US Publication No. 2003/0065986).

Regarding claims 1, 4 and 12-13, Fraenkel discloses

generating and placing a session identifier (ID), (Table 1, Event Meter, record ID, transaction ID) as a correlation tag in each of a plurality of requests sent by a client to a web server device, (paragraph 119, lines 1-6), wherein said correlation tags identify said requests, (paragraph 119, lines 10-14);

generating and placing a connection identifier (ID) as a correlation tag, (paragraph 120, lines 1-5) in each communication packet sent between the client and the web server device, (paragraph 133, lines 1-7 and 15-18);

identifying, using said session identifiers and connection identifiers, requests and communication packets that corresponds to a single event [Frankel, paragraphs 119-120 and Table 1];

combining said identified requests and said communication packets into a metric [paragraph 120, lines 1-5 and paragraph 133, 5-18, paragraph 119, lines 11-18]; and

estimating, using said metric, client perceived response time of the single event of at least one web server computing device to a request by one or more client

computing devices connected to the web server device via a network, (Abstract, paragraph 14, lines 5-6).

Regarding claim 2, Fraenkel further discloses  
said event is selected from one of a web page download and a web session,  
(paragraph 50, lines 2-3).

Regarding claim 3, Fraenkel further discloses  
said calculating step is performed using analytical models of response time,  
(paragraph 20, lines 2-3).

Regarding claim 5, Fraenkel further discloses  
the network is the Internet, (paragraph 13, lines 20-23 and paragraph 72, lines 9-11).

Regarding claim 6, Fraenkel further discloses  
said step of generating and placing the session ID further comprises a step of  
establishing a web session between the client and the web server device, (paragraph 72, lines 9-11).

Regarding claim 7, Fraenkel further discloses  
a step of logging each web session between the client and the web server  
device, (paragraph 14, lines 15-18).

Regarding claim 8, Fraenkel further discloses

said step of generating and placing a connection ID further comprises a step of establishing a network connection between the client and the web server device, (paragraph 72, lines 9-11).

Regarding claim 9, Fraenkel further discloses

a step of logging said each communication packet sent between the client and the web server, (paragraph 14, lines 10-14).

Regarding claim 10, Fraenkel further discloses

a step of grouping all of said plurality of requests and said communication packets corresponding to a single event, (paragraph 15, lines 2-4).

### ***Response to Arguments***

5. Applicant's arguments filed 07/26/2010 have been fully considered but they are not persuasive.

A – Applicant argues “Fraenkel discloses a root cause analysis of server system performance degradations. The system disclosed by Fraenkel is a typical application

layer system that uses agents installed on end user computers. Fraenkel does not teach or disclose any networking layer type systems.”.

A – The Examiner disagrees: Fraenkel discloses the results for each transaction are stored in a database containing the following data: record ID (increases sequentially with each new execution event), transaction ID, result (status value) date/time, response time in seconds, and properties of agent computer (location, organization, etc) [Fraenkel, page 10, paragraph 119 and Table 1, Event Meter], Fraenkel also discloses application data transactions in the monitoring of the transactional servers [web servers, Fraenkel, paragraphs 8 and 12], monitoring and reporting on network time [network layer, paragraph 19] and server time [application time, paragraph 19], a server agent, monitoring of server resource utilization parameters concurrently with the monitoring of transaction response times, or other response times by the client side [paragraph 20], types of application data monitored from the server include capture screens returned by the transactional server [paragraphs 130-131], checking and storing of the capture screens [paragraph 132] and network transactions [paragraph 133].

B – Applicant argues “Additionally, Fraenkel exhibits many of the problems that are described in the prior art section of the present application. As being only an application layer type system none of the networking data can be collected and utilized in the determination of the client perceived response times.”.

B – The Examiner disagrees: Fraenkel discloses the results for each transaction are stored in a database containing the following data: record ID (increases sequentially with each new execution event), transaction ID, result (status value) date/time, response time in seconds, and properties of agent computer (location, organization, etc) [Fraenkel, page 10, paragraph 119 and Table 1, Event Meter], Fraenkel also discloses application data transactions in the monitoring of the transactional servers [web servers, Fraenkel, paragraphs 8 and 12], monitoring and reporting on network time [network layer, paragraph 19] and server time [application time, paragraph 19], a server agent, monitoring of server resource utilization parameters concurrently with the monitoring of transaction response times, or other response times by the client side [paragraph 20], types of application data monitored from the server include capture screens returned by the transactional server [paragraphs 130-131], checking and storing of the capture screens [paragraph 132] and network transactions [paragraph 133].

Fraenkel discloses both application and network level monitoring, collecting the metrics and storing data within a database which is used to correlate the data when requested.

### ***Conclusion***

Examiner's Note: Examiner has cited particular paragraphs / columns and line numbers in the reference(s) applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures



may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the cited passages as taught by the prior art or relied upon by the examiner.

Should applicant amend the claims of the claimed invention, it is respectfully requested that applicant clearly indicate the portion(s) of applicant's specification that support the amended claim language for ascertaining the metes and bounds of applicant's claimed invention

Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIAM J. GOODCHILD whose telephone number is (571)270-1589. The examiner can normally be reached on Monday - Friday / 8:00 AM - 4:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivek Srivastava can be reached on (571) 272-7304. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/WJG/  
09/20/2010

/VIVEK SRIVASTAVA/  
Supervisory Patent Examiner, Art Unit 2445